IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

TEDDY HUTCHISON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**No. 3:09-cv-0397**
	)	**Judge Nixon**
METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY and OFFICER BYRON CARTER, OFFICER SCOTT BILLINGSBY, and other Unknown Officers, in their individual and official capacities,	)	
	)	
Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF METROPOLITAN GOVERNMENT'S MOTION TO DISMISS

The Metropolitan Government of Nashville and Davidson County hereby moves to dismiss Plaintiff's claim against it in this action. Plaintiff's complaint fails to state a viable claim against the Metropolitan Government for municipal liability under 42 U.S.C. § 1983, in that it fails to allege facts to support that the officer conduct at issue resulted from a custom, policy, or practice of the Metropolitan Government. Accordingly, and as described in more detail below, the Metropolitan Government should be dismissed as a defendant to this action.

FACTUAL ALLEGATIONS

Plaintiff alleges in the complaint that on September 25, 2008, at approximately 11:00 a.m., Plaintiff was operating a vehicle legally owned by a friend, Timothy Sykes. (Compl., Docket Entry No. 1, ¶¶ 9, 10.) Mr. Sykes was a passenger in the vehicle at the time. (Id. ¶ 10.) Plaintiff alleges that five police vehicles surrounded the vehicle he was driving and that several police officers, including the two named defendant officers, exited their vehicles with weapons

drawn. (Id. ¶¶ 13-14.) According to the complaint, the officers ordered Plaintiff out of the vehicle. (Id. ¶ 14.)

Plaintiff contends that he lost a leg in 2003 and requires the use of a prosthesis or crutches to move from one location to another. (Id. ¶ 16.) He further alleges that defendant Officer Byron Carter ordered Plaintiff out of the vehicle and would not allow Plaintiff access to his crutches. (Id. ¶¶ 18-20.) The complaint alleges that Plaintiff was searched and ordered into the floorboard of Officer Carter's squad car. (Id. ¶ 23.) According to Plaintiff, the search revealed no contraband "or other reason for detaining the individuals." (Id. ¶ 27.)

Plaintiff asserts Fourth and Fourteenth Amendment violations in this case, pursuant to 42 U.S.C. § 1983.

STANDARD OF REVIEW

The standard for testing the sufficiency of the allegations in a complaint in a motion to dismiss under Fed. R. Civ. P. 12(b)(6) was articulated by the United States Supreme Court in Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 554-58, 562-63, 570 (2007). A plaintiff must allege in a complaint "enough facts to state a claim to relief that is plausible on its face." Id. at 570. In reaching its decision in Twombly, the Supreme Court recited the old standard set forth in Conley v. Gibson, 355 U.S. 41, 47 (1957), which held that "a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Id. at 45-46. As to this standard, the Supreme Court in Twombly opined, "after puzzling the profession for 50 years, this famous observation has earned its retirement." Twombly, 550 U.S. at 563. In its place, the new standard for testing the sufficiency of a complaint in a Rule 12 motion is whether "enough facts [have been set forth] to state a claim to relief that is plausible on its face." Id. at 570.

Additionally, the Supreme Court recently clarified that the Twombly standard is not limited to antitrust cases. Rather, "[t]hough Twombly determined the sufficiency of a complaint sounding in antitrust, the decision was based on [the Court's] interpretation and application of Rule 8 [of the Federal Rules of Civil Procedure]." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1953 (2009). The "decision in Twombly expounded the pleading standard for 'all civil actions,'" including this one. Iqbal, 129 S. Ct. at 1953.

LEGAL ARGUMENT

Plaintiff brings this lawsuit pursuant to 42 U.S.C. § 1983, which serves as a vehicle through which plaintiffs can allege violations of constitutional rights or other federal law against municipalities. Section 1983, however, will not support a claim against a municipality based upon a *respondeat superior* theory of liability. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 690-91 (1978). Rather, a municipality may be held liable "only for the adoption of a 'policy or custom' that violates federally protected rights." Schroder v. City of Fort Thomas, 412 F.3d 724, 727 (6th Cir. 2005); see also Ctr. for Bio-Ethical Reform, Inc. v. City of Springboro, 477 F.3d 807, 819 (6th Cir. 2007).

Plaintiff's complaint fails to allege any facts that could form the basis for a viable claim against the Metropolitan Government under Monell. Rather, Plaintiff's complaint is based entirely upon the conduct of the officers on the day in question – conduct for which the Metropolitan Government simply cannot be held vicariously liable under federal law. Because the complaint fails to allege facts to establish a claim for municipal liability under Section 1983 that is "plausible on its face," the Metropolitan Government should be dismissed as a defendant. Monell, 436 U.S. at 690-91; Twombly, 550 U.S. at 570.

CONCLUSION

Because Plaintiff's complaint fails to allege any facts to establish a viable claim for municipal liability under Section 1983 and Monell, the Metropolitan Government respectfully requests that the Court dismiss it as a defendant to this lawsuit.

Respectfully submitted,

THE DEPARTMENT OF LAW OF
THE METROPOLITAN GOVERNMENT
OF NASHVILLE AND DAVIDSON COUNTY
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Certificate of Service

This is to certify that a copy of the foregoing has been forwarded, via the electronic filing system, to Larry L. Crain, 5214 Maryland Way, Suite 402, Brentwood, TN 37027, on this the 1st day of June, 2009.

s/Allison L. Bussell
Allison L. Bussell